

Remarks

Preliminary Comments

Applicant submitted with his response of December 27, 2005 additional drawings and requested entry of these drawings. Applicant respectfully requests, if appropriate, confirmation of the entry of these drawings.

Claim rejections – 35 C.F.R. §112

In paragraph 1 on page 2, the Office rejected claims 32 and 35 under 35 USC §112, first paragraph, as failing to comply with the written description requirement. In particular, the Office alleged that the newly recited “guide” and “computer” are new matter.

With regard to the recitation of the “guide” in claim 32, applicant would like to direct the Office’s attention to original claim 12, which specifically refers to guide (1) as well as numeral (1) in Figure 2.

With regard to the recitation of a “computer” in claim 35, applicant would like to direct the Office’s attention to the disclosure on page 3, first three lines, but in particular to page 5, lines 4 to 28, of the English specification.

Accordingly, applicant submits that the original application provides “adequate support” for the claims and describes the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention (See, e.g., MPEP § 2163 citing Moba, B.V. v. Diamond Automation, Inc., 325 F.3d 1306, 1319 (Fed. Cir. 2003)). Applicant notes that it is well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification (MPEP § 2163).

In paragraph 3, the Office rejected claims 15 to 22 under 35 U.S.C. §103(a) as being obvious over United States Patent 6,512,169 to Santini (hereinafter “Santini”) in view of the newly cited article “Making simple musical instruments,” 1995 (hereinafter “Hopkin”).

Santini discloses a combination maraca-guiro musical instrument having

sounding furrows on the outer surface of the cylindrical center and sounding pebbles within.

Hopkin discloses making a series of grooves along the surface of his bamboo guido, wherein the grooves should be about 1/4" or 3/8" apart on center.

Claim 15 has been amended to read:

A musical instrument comprising a surface, wherein:
at least part of said surface comprises a ribbing,
wavelengths of said ribbing are between 0.001 mm and 250 mm,
a certain wavelength results in a certain frequency when said instrument is
played at a constant tempo, and
individual modules or sections of said surface provide for the built-up of
sequences of notes. [Emphasis added]

Support for this amendment can be found , e.g., on page 2 lines 2 and 3 and page 2, lines 19 to 23 of the specification, the last two paragraphs of page 2 as a whole and the first paragraph of page 3 as well as in the Figures.

Applicant submits that neither Santini and Hopkin are interested in creating certain frequencies, that is, a sound with a certain pitch nor in creating relative sounds that are built up from individual sections of the instrument. The sectional or modular structure of the instrument of the present invention allows for the creation of relative sounds as presently claims but not contemplated or disclosed by either of the references. Accordingly, Santini and Hopkin do not teach or suggest all the claim limitations as required for a *prima facie* case of obviousness (MPEP §2145). Applicant furthermore submits that there is also not suggestion or motivation, either in Santini or Hopkin or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine their teachings to arrive at the claimed invention (MPEP §2145).

Applicant would also like to point the Office to the specific limitations added by claims 21 and 22 (see also claim 31) and not specifically addressed in the last Office Action. Applicant believes that these specific features are also not taught or suggested by the art presented or the general knowledge in the art.

In paragraph 4, the Office rejected claims 25 to 26, 28 to 31, 33 and 36 under 35 U.S.C. §103(a) as being obvious over Santini in view of Hopkin and U.S. Patent 1,987,232 to Gilbert (hereinafter "Gilbert").

Santini and Hopkin have been discussed above. Gilbert discloses a washboard having a rubbing element composed of two congruated sheets 6, 7 of thin sheet metal laid back to back and connected via side bars 1 and 2. This configuration is shown, for example, in Fig. 5.

Claim 25 requires:

A module for a musical instrument having a surface, wherein
at least part of the surface of the module comprises a ribbing, wherein
wavelengths of said ribbing are between 0.001 mm and 250 mm, and
said module comprises two opposite sides A and B and a coupling on each of
said opposite sides, wherein:
said module can be rigidly connected via said couplings to one or more further
modules comprising surfaces,
at least part of said surfaces of said further modules are flat or ribbed, and the
surfaces of individual modules provide for the built-up of sequences of notes.
[Emphasis added].

Independent claim 33 has been amended accordingly.

Gilbert's back to back configured washboard sheet are not designed to provide relative sounds as presently claimed.

Accordingly, applicant submits that Santini, Hopkin and Gilbert do not teach or suggest all the claim limitations as required for a *prima facie* case of obviousness (MPEP §2145). Applicant furthermore submits that there is also not suggestion or motivation, either in Santini, Hopkin or Gilbert or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine their teachings to arrive at the claimed invention (MPEP §2145).

In paragraph 5, the Office rejected claim 23 under 35 U.S.C. §103(a) as being obvious over Santini, in view of Hopkin and further in view of U.S. Patent 4,480,521 to Schmoyer.

The deficiencies of Santini and the Hopkin have been discussed above. Applicant submits that Schmoyer does not cure these deficiencies and claim 23 is thus not obvious over the cited art.

Applicant would like to thank the Office for acknowledging the novelty and non-obviousness of the subject matter of claims 27 and 34. Applicant has converted these claims into independent form to incorporate all the limitations of their base claims (including the correction of a typographical error in each of these claims) so that these claims should now be in condition for allowance.

Claims 15, 25 and 33 have been amended solely to further the prosecution of this case as well as to correct the above referenced typographical error (sites to "sides").

Applicant has shown above that independent claim 15, 25 and 33 are nonobvious over the art presented. These claims should therefore in condition for allowances. Claims 16, 18 to 24, 26, 28 to 32 and 35 to 36 which are directly or indirectly dependent on these claims should also be allowable.

Accordingly, allowance of this application is earnestly requested.

The Commissioner is authorized to charge any fee deficiencies or overpayments to undersigns deposit account no. 50-3135.

Respectfully submitted,

By /Joyce v. Natzmer/
Joyce von Natzmer
Registration No. 48,120
Hall, Vande Sande & Pequignot, LLP
10220 River Road, Suite 200
Potomac, MD 20854
Telephone: (301) 657-1282

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